IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2007

CORAM :

THE HONOURABLE MR.JUSTICE D.MURUGESAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.1059 and 1060 of 2007

The Commissioner of Income-tax,
Salem. ..Appellant in both
the T.Cs./Appellant

Vs

M/s.Sri Ranganathar & Co.,
4B, Laxmipuram,
Gandhi Road,
Salem-636 007. ..Respondent in both
the T.Cs./Respondent

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Bench "SMC-III(D)", Chennai in I.T.A. Nos.1006 and 1007/Mds/2005 dated 16.11.2005 for the assessment years 2000-01 and 2001-02. against the order of the Commissioner of Income Tax (Appeals) Salem for the Assessment year of 2000-01 and 01-02 dated 8/2/05 in ITA Nos. 16 and 19/04-05 and against the Assessment order of the Assistant Commissioner of Income Tax Circle I Salem (I/C) dated 31.3.2007 PAN/GIR NO. IEFS0002 respectively

For Appellant : Mr.N.Muralikumaran,
Sr.Standing Counsel for
Income-tax Department

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JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income-tax Appellate Tribunal, Bench "SMC-III(D)", Chennai in I.T.A. Nos.1006 and 1007/Mds/2005 dated 16.11.2005 raising the following common substantial question of law:-

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> "When the assessee itself has declared that the income of the Balaji Trust is to be clubbed with the income of the assessee, for the earlier Assessment Years, treating the income of Balaji Trust as separately for the Assessment Years 2000-2001 to 2001-2002 that of the assessee, whether would be opposed to consistency and logic?"

2. The facts leading to the above substantial question of law are as under:

The assessee is a Civil Engineering Contractor and Petrol Product Dealer for Indian Oil Corporation. The relevant assessment years are 2000-2001 and 2001-2002 and the corresponding accounting years ended on 31.03.2000 and 31.03.2001, respectively. For the assessment year 2000-2001, the assessee filed Return of income declaring "NIL" income on 19.10.2000. The Return was processed under Section 143(1) of the Income-tax Act ("Act" in short) on 02.11.2000. Subsequently notice under Section 148 of the Act was issued on 23.09.2002 and notice under Section 143(2) of the Act was issued on 26.06.2003. In response to the said notice, the assessee, by its letter dated 02.12.2003 has informed that the Return filed on 19.10.2000 may be taken as proper compliance to the above notice. The Assessing Officer completed the assessment under Section 143(3) of the Act. For the assessment year 2001-2002, the assessee filed Return of income declaring a loss of Rs.32,78,940/- and claiming refund of Rs.42,12,380/-. Later, the case was selected for scrutiny and notice under Section 143(2) was issued and the assessment was completed under Section 143(3) of the Act. While completing the assessments, the Assessing Officer was of the view that the income of the Trust, namely, Sri Balaji Trust, has to be included in the total income of the assessee as the members of the AOP assessee and trustees of the alleged Trust are one and the same and the income of the Trust are being enjoyed by the members of the AOP assessee only. Further it was found out that the AOP assessee itself have availed benefit under the scheme of KVSS and paid the tax arrears for the earlier years wherein it has preferred to club the income of Sri Balaji Trust with the income of the AOP assessee from the assessment year 1987-88 onwards. Hence the Assessing Officer clubbed the income of Sri Balaji Trust in the case of the assessee for the above two assessment years. Aggrieved by the orders, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeals of the assessee and held as follows:-

> "For the asst. year 2000-01, the objection is against clubbing of income from Balaji Trust of Rs.8,91,060/-. This issue was considered by me in ITA No.4/02-03 for asst. Year 99-00 by order dated 4-12-2003. As per page 2 of para 3 of the order, respectfully following

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> ITAT/Mds./Bench 'C' in ITA No.989/Mds. /90-91 for asst. year 87-88 and ITA No.1001/Mds./91 for asst. year 87-88 in case of M/s.Balaji Trust and in ITA No.803/Mds./91 for asst. year 87-88 in assessee's own case, it was held that the clubbing of income is not valid in law. Therefore, respectfully following the orders of higher appellate authorities in the case of Sri Balaji Trust as well as of the assessee, the AO is directed to delete the amount of Rs.8.91 lakhs."

Aggrieved, the Revenue filed appeals before the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeals filed by the Revenue by following its earlier order and held as follows:-

> "After hearing both the parties, I find that the Assessing Officer made the disallowance because according to him, Sri Balaji Trust was not genuine. I further find from the order of the Tribunal 'C' Bench Madras in the case of assessee in ITA No.989/Mds/1991 (copy of the order was filed on record by the ld. counsel) that the trust was held to be genuine. Therefore, I think, now there is no justification in the addition in respect of the trust income and therefore the order of the ld. CIT (Appeals) calls for no interference and the same is confirmed."

Hence the present tax cases by the Revenue.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the members of the AOP assessee and Trustees of the alleged Trust are one and the same and the income of the Trust is enjoyed by the members of the AOP assessee only. Further it is stated that the alleged Trust was not a genuine one and also the AOP assessee itself have availed benefit under the scheme of KVSS and paid tax arrears for earlier years, wherein it preferred to club the income of Sri Balaji Trust with the income of the assessee from the assessment year 1987-88 onwards. Hence the Assessing Officer is right in clubbing the income of Sri Balaji Trust with that of the assessee's income.

4. Heard the counsel. In respect of the earlier assessment years in the assessee's own case as well as in the case of Sri Balaji Trust, the C.I.T.(A) as well as the Tribunal had given a finding that the Trust is a genuine one and that the Assessing Officer was wrong in clubbing the income of the said Sri Balaji Trust with the assessee's income. In the present cases, the Tribunal followed its earlier order and held that the Assessing Officer cannot club the income of Sri Balaji Trust with the income

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of the assessee. The Tribunal correctly followed its earlier order as the facts involved in the present cases are the same as in the earlier assessment years. When the present matter came up for hearing on 23.07.2007, the counsel appearing for the Revenue was directed to find out as to whether the Revenue has preferred any appeal against the earlier order of the Tribunal to the High Court, or not and also he has undertaken to furnish a copy of the earlier order of the Tribunal. Further the case was adjourned to 31.07.2007. On 31.07.2007, the counsel for the Revenue again requested the Court to adjourn the matter finally to enable him to get the details from the Department. Hence the matter was adjourned today. Even today, the counsel for the Revenue is unable to furnish any details regarding the earlier order of the Tribunal and is also unable to furnish a copy of the same. Therefore, the earlier order of the Tribunal has become final. Further the counsel for the Revenue is also unable to give any compelling reason or point out any material change in the present assessment years. Hence, we are of the view that the Tribunal correctly followed its earlier order and held that the Assessing Officer cannot club the income of Sri Balaji Trust in the hands of the assessee. In view of this, we do not find any error or illegality in the order of the Tribunal so as to warrant interference.

5. Under these circumstances, we are of the view that no substantial question of law arises for consideration of this Court and accordingly the tax cases are dismissed. No costs.

km

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench "SMC-III(D)",
   Chennai.

2. The Commissioner of Income-tax (Appeals)
   Salem.

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3. The Assistant Commissioner of Income-tax
   Circle I, Salem.(I/C)

4. The Secretary, Central Bureau of Direct Zone
New Delhi

+2cc to Mr. N. Muralikumaran, Advocate s nos. 49090 and 49094

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nm(20.08.07)

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